IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.1020 OF 2005
IN
NOTICE OF MOTION NO.525 OF 2002
IN
SUIT NO.203 OF 2002

Serene Industries Limited .. Appellant
(Formerly known as J.N.Kanth
Chemicals and Dyestuff Limited and
subsequently known as Serene
Dyestuff Industries Limited.)
v/s.

ICICI Limited (Debenture Trustee)
& ors. .. Respondents

ALONGWITH

APPEAL NO.1021 OF 2005
IN
NOTICE OF MOTION NO.393 OF 2002
IN
SUIT NO.203 OF 2002

Serene Industries Limited .. Appellant
(Formerly known as J.N.Kanth
Chemicals and Dyestuff Limited and
subsequently known as Serene
Dyestuff Industries Limited.)

v/s.

ICICI Limited (Debenture Trustee)
& ors. .. Respondents

Mr.H.J.Thakkar, senior counsel i/by Mr.M.K.Nesari for the appellant.

Mr.Simil Purohit with Mr.Arun Siwach i/by M/s.A.Mangaldas & S.A.Shroff & Co. for the respondents.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 19th November, 2005

P.C.

Both these appeals were heard together for motion hearing.

2. By the impugned order dated 30th September, 2005, the learned motion Judge disposed of two notices of motion. Notice of motion No.393 of 2002 was taken out by the plaintiff for appointment of Court Receiver and other interim reliefs. The other notice of motion No.525 of 2002 is at the instance of the defendants. By the said notice of motion, the defendants prayed for rejection of plaint under Order VII Rule 11 of the Civil Procedure Code as according to them, the suit was barred by law. By the impugned order, the learned motion Judge granted the notice of motion No.393 of 2002 taken out by the plaintiff and ordered appointment of Court Receiver and issued certain directions. The other notice of motion taken out by the defendants for rejection of plaint came to be rejected. Hence the two appeals by the defendants.

3. Mr.H.J.Thakkar, the learned senior counsel for the appellant raised two-fold contention. First, he would submit that in view of the reference under section 15 having been registered under the Sick Industrial Companies (Special Provisions) Act, 1985, the suit was not maintainable and no interim order of appointment of Court Receiver should have been made. The second submission of the learned senior counsel for the appellant was that the suit filed by the plaintiff in their capacity as debenture trustee could not be maintained in the light of Regulation 13A of

Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993. The submission of the learned senior counsel for the appellant is that by virtue of section 13A, the debenture trustee is precluded from acting where it has lent money to the body corporate.

4. None of the contentions has any merit. It is true that the reference under section 15 of the Act of 1985 has been registered by BIFR. However, the fact of the matter is there is already permission granted by the Board to continue with the recovery proceedings because the BIFR found the conduct of the appellant No.1- company far from satisfactory and rather designed to deprive the secured creditors of their legitimate dues. We also hold the same view. The appellant-company initially commenced the proceedings under the Act of 1985 in the year 1998 and the said proceedings ultimately came to be dismissed on 6.6.2000. Thereafter, a second reference was got registered by the appellant-company. It is surprising that during the pendency of second reference yet another reference has been got registered by the appellant-company in the year 2002. By that as it may, as already noticed above the BIFR has permitted ICICI Company to continue the recovery proceedings. In view thereof, bar created by section 22 does not come into play.

5. As regards other contention in relation to Regulation 13A(b), we find no merit in the said

contention. The present suit filed by the plaintiff in its capacity as debenture trustee cannot be said to be barred under the said provision.

6. Thus seen, there is no merit in the contention of the learned senior counsel that plaint ought to have been rejected.

7. In the light of the fact that deed of trust debenture is, prima facie, valid and subsisting and the principal amount of Rs.10,00,00,000/- and interest thereon appears to be outstanding, the appointment of Court Receiver by the learned motion Judge was imminently just and proper. The learned motion Judge has in the impugned order permitted the appellant-company to act as an agent of the Court Receiver on usual terms and condition of royalty but without security. In view thereof, obviously, the appellant-company shall remain in possession of the subject property as an agent of the Court Receiver on usual terms and conditions of royalty.

8. We find the impugned order just and proper. No interference is called for. Both the appeals are dismissed in limine.

9. Oral prayer for stay is rejected.

(R.M.LODHA, J.)

(D.G. KARNIK, J.)